

CHAPTER 43-28 DENTISTS

43-28-01. Definitions.

1. "Advertising" means to invite the attention of or give notice to the public, by any means, medium or manner whatsoever of any fact, information or data pertaining to or being conducive of the practice of dentistry in this state.
2. The "board" means the state board of dental examiners.
3. "Certificate of registration" means a written statement of the board declaring that a licensed dentist has paid the biennial registration fee required by this chapter.
4. "Legal entity" includes foreign and domestic corporations, foreign and domestic limited liability companies, partnerships, trade or firm names and public and private institutions.
5. "License" means the right, authority, or permission granted by the state board of dental examiners to practice dentistry in this state.
6. For the purposes of this chapter, the term "practice of dentistry" includes examination, diagnosis, treatment, repair, administration of local or general anesthetics, prescriptions, or surgery of or for any disease, disorder, deficiency, deformity, condition, lesion, injury, or pain of the human oral cavity, teeth, gingivae and soft tissues, and the diagnosis, surgical, and adjunctive treatment of the diseases, injuries, and defects of the upper and lower human jaw and associated structures.

43-28-02. Exceptions. The provisions of this chapter do not apply:

1. To the filling of written prescriptions of a licensed and registered dentist by any person or legal entity, for the construction, reproduction, or repair of prosthetic dentures, bridges, plates, or appliances, to be used or worn as substitutes for natural teeth, provided, that such person or legal entity may not solicit or advertise, directly or indirectly, by mail, card, newspaper, pamphlet, radio, television, or otherwise to the general public to construct, reproduce, repair prosthetic dentures, bridges, plates, or other appliances to be used or worn as substitutes for natural teeth.
2. To students enrolled in and regularly attending any dental college or dental hygiene or dental assisting program recognized as such by the board, if their acts are done in dental college or the dental hygiene or dental assisting program and under the direct supervision of their instructor; or to students who are in training in dental programs recognized as such by the board and who are continuing their training and performing the duties of an extern under the supervision of a licensed and registered dentist who has received approval to supervise an externship by the appropriate accrediting committee, including the board.
3. To legally qualified and licensed physicians, surgeons, and other practitioners authorized by law, who perform any act defined herein as the practice of dentistry in emergency cases.
4. To a duly licensed and registered dentist of another state temporarily operating in this state as a clinician or lecturer under the auspices of a dental college, a reputable dental, dental hygienist, or dental assistant society.
5. To the practice of dentistry in the discharge of their official duties by graduate dentists or dental surgeons in the United States army, navy, air force, public health

service, coast guard, veterans bureau, or director of the dental division of the state department of health.

43-28-03. State board of dental examiners - Members - Appointment - Terms of office - Oath - Vacancies. The state board of dental examiners consists of seven members appointed by the governor. The membership of the board must include five dentist members, one dental hygienist member, and one consumer member. Appointment to the board is for a term of five years, with terms of office arranged so that one term expires on March sixteenth of each year, except that each fifth year there must be two new board members appointed, one of whom is a dentist and the other a dental hygienist and two years later two new board members must be appointed, one of whom is a dentist, and one of whom is a consumer member. The first five-year term of the consumer member commences on July 1, 1993, and continues through March 15, 1998. Each member of the board shall hold office until a successor is appointed and qualified. Persons appointed to the board shall qualify by taking the oath required of civil officers. No member may serve more than ten years or two 5-year terms of office. If a member of the board is absent from two consecutive regular meetings, the board may declare a vacancy to exist. All vacancies on the board must be filled by the governor by appointment.

43-28-04. Qualifications and appointment of members of the board - Limited vote.

1. A person may not be appointed as a dentist member of the board unless that person:
 - a. Is a licensed and registered dentist in accordance with chapter 43-28.
 - b. Is actively engaged in the practice of dentistry and has been so engaged in this state for at least five years immediately preceding the appointment.
2. A person may not be appointed as the dental hygienist member of the board unless that person:
 - a. Is a licensed and registered dental hygienist in accordance with chapter 43-20.
 - b. Is actively engaged in the practice of dental hygiene and has been so engaged in this state for at least five years immediately preceding the dental hygienist's appointment.
3. A person may not be appointed as the consumer member of the board unless that person:
 - a. Has been a resident of North Dakota for five years immediately preceding appointment.
 - b. Has no personal or family financial relationship with the dental profession.
 - c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the spouse of a person engaged in any of those occupations.
4. The dental hygienist and consumer member of the board shall exercise full voting privileges in all areas except that the dental hygienist may not participate in the clinical examination of dentists for licensure and the consumer member may not participate in the clinical examination of dentists or hygienists for licensure.

43-28-05. Meeting of board - Officers - Bond - Compensation of members - Quorum. The board shall hold a regular annual meeting at a place designated by the board and special meetings when necessary. At the regular meeting of the board, the members shall elect from their number a president, a member who has at least two years remaining on that member's term, president elect, a member who has at least three years remaining on that member's term, and a secretary-treasurer. The executive director shall furnish a bond in the amount fixed by the

board. Each member of the board shall receive as compensation the sum of one hundred ten dollars for each day actually engaged in the duties of the office and reimbursement for expenses as provided in section 54-06-09 while attending meetings of the board. The executive director may be paid an annual salary in an amount determined by the board. Four members of the board constitute a quorum but a smaller number may adjourn from time to time.

43-28-06. Powers of board. The board may:

1. Adopt and enforce reasonable rules to govern its proceedings and to carry out this chapter.
2. Examine applicants for licenses to practice dentistry or dental hygiene in this state, either by direct examination or by accepting the results of national or regional dental testing services in which the board participates or which the board recognizes.
3. Issue, suspend, revoke, limit, cancel, restrict, and reinstate licenses to practice dentistry or dental hygiene and the biennial certificates of registration upon any grounds authorized by this chapter.
4. Issue subpoenas to require the attendance of witnesses and the production of documentary evidence and may administer oaths. Any member or executive officer of the board may administer oaths to witnesses, or issue subpoenas, but all subpoenas so issued must be attested by the secretary who shall affix the seal of the board thereto.
5. Employ and compensate an executive director, attorneys, investigative staff, and clerical assistants and may perform any other duties imposed upon the board by this chapter.
6. Establish minimum continuing professional education requirements for dentists, dental hygienists, and dental assistants.

43-28-07. Expenses of board - How paid - Funds held by secretary-treasurer.

Repealed by S.L. 1971, ch. 510, § 15.

43-28-08. Records of board - Use as evidence. The board shall keep full and complete minutes of its proceedings and of its receipts and disbursements and a full and accurate list of all persons licensed and registered by it. The records of the board together with the list of all licensed and registered dentists, are public records and must be open to public inspection at all reasonable times. Such records, or a transcript of the same or any part thereof, under the seal of the board, duly certified by its secretary-treasurer, are competent evidence of the facts therein stated. A certificate of the secretary-treasurer under the seal of the board stating that any person is or is not a duly licensed and registered dentist is prima facie evidence of such fact.

43-28-09. Biennial report. The board may submit a report to the governor and the secretary of state in accordance with section 54-06-04.

43-28-10. License and certificate required. No person may practice dentistry in this state unless:

1. The person first obtains a license to practice in this state; and
2. The person holds a valid biennial certificate of registration.

43-28-11. Examination required - Application - Qualifications - Fees. Any person who desires to obtain a license to practice dentistry in this state shall apply to the executive director of the board on forms prescribed by the board and shall submit to an examination by the board. The application must be verified under oath to the effect that all of the statements

contained in the application are true of applicant's own knowledge, and must be received by the executive director of the board at least thirty days before the date of the examination. The applicant shall enclose with the application a recent autographed picture of the applicant and an application fee as determined by the board. Additional costs of regional or other state's examinations as set out in section 43-28-12.1 and chargeable under section 43-28-05 as board member compensation may be assessed against the applicant or applicants. The applicant shall show proof that the applicant:

1. Is a graduate of a dental college recognized by the board.
2. Is a person of good moral character.

43-28-11.1. Conviction not bar to licensure - Exceptions. Conviction of an offense does not disqualify a person from licensure under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as a dentist, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

43-28-12. Examination - Subjects covered. At the next regular meeting of the board held after an application for a license and a certificate of registration to practice dentistry in this state is made the applicant shall appear before the board, which shall give an examination to test the applicant for fitness to practice dentistry. The board may require the applicant to supply the board with the results of the applicant's national board examination which may at the discretion of the board be considered determinative of the applicant's theoretical knowledge and scholastic fitness for the practice of dentistry. The board may require the applicant to supply the board with the results of the applicant's clinical competency examination which may be administered:

1. Directly by the board;
2. By a regional dental testing service in which the board participates; or
3. By a regional dental testing service determined by the board to be equivalent to those in which the board directly participates.

The board may consider the results of a clinical competency examination to be determinative of the applicant's clinical fitness for the practice of dentistry.

43-28-12.1. Regional or other states' examination. The results of an examination given in another state or an examination administered by a regional dental testing service recognized by the North Dakota board of dental examiners may be considered by this state's board as an example of the applicant's fitness to practice dentistry in this state, if that licensing body or regional testing service is officially recognized by the board. The applicant must be found to be of good moral character.

43-28-12.2. Continuing educational requirement for dentists - Audit.

1. At least thirty days before January first of each even-numbered year, the board shall send a renewal notice that includes a form for continuing education reporting and an application for license renewal to each licensee at the licensee's last place of residence as noted in the records of the board. Each individual licensed to practice dentistry in this state shall provide the board evidence, of a nature suitable to the board, that the licensee has attended, or participated in, the amount of continuing education in dentistry required by the board. The minimum requirement may not be less than thirty-two hours during the preceding two years of licensure. The board may accept for compliance with the continuing education requirement any of the following which, in the opinion of the board, contributes directly to the dental education of the licensee:

- a. Proof of attendance at lectures, study clubs, college postgraduate courses, or scientific sessions of conventions.
 - b. Proof of research, graduate study, teaching, or service as a clinician.
 - c. Proof of any other continuing education approved by the board.
2. The board may select a random sample of the license renewal applications for audit of continuing education credits. Each licensee shall maintain certificates or records of continuing education activities. Upon receiving notice of an audit from the board, a licensee shall provide satisfactory documentation of attendance at or participation in the continuing education activities listed on the licensee's continuing education form. The failure to comply with the audit is grounds for nonrenewal of the license. Any licensed dentist who fails to comply with this requirement may, at the discretion of the board, be reexamined to determine the dentist's competency to continue licensure. If, in the opinion of the board, the licensed dentist does not qualify for further licensed practice, the board shall suspend the license until the dentist provides acceptable evidence to the board of the dentist's competency to practice.

43-28-13. License - When certificate issued - When reexamination required. If an applicant has the necessary qualifications and successfully passes the examination for a license to practice dentistry in this state, or an equivalent examination in another state as set out in section 43-28-12.1, the board may:

1. Issue to the applicant a license to practice dentistry in this state, which must be entered upon the records of the board.
2. Issue said licensed dentist a certificate of registration in the form prescribed by the board. Any dentist so licensed and registered, who does not undertake the actual practice of dentistry in this state within five years from the date of the dentist's license and registration, shall, before engaging in the practice of dentistry in this state, notify the board of the intention in writing so to do, whereupon the board, after a full investigation, may reexamine said dentist as to the dentist's qualifications to practice dentistry in this state should the board deem such reexamination necessary and notify such dentist thereof. The failure of such dentist to give the written notice to the board required herein before engaging in the practice of dentistry in this state operates as a forfeiture of the dentist's license to practice dentistry.

43-28-14. Reexamination - Fee - Additional education. If an applicant fails to pass the examination given by the board, the applicant may apply for another examination, and upon the payment of the fee determined by the board must be reexamined. The board shall determine the number of times an applicant may be reexamined. However, if the applicant fails on three occasions to pass the examination given by the board or an equivalent examination under section 43-28-12.1, the applicant shall provide evidence of additional education as required by the board before applying for another examination in this state.

43-28-15. Licensure by credential review. The board may issue a license and certificate of registration to practice dentistry in this state to any person who wishes to practice dentistry in North Dakota upon a practical examination, if the person:

1. Has been licensed and has been actively practicing dentistry for at least five years immediately preceding application to practice dentistry in another state where the requirements are at least equivalent to those of this state.
2. Is a reputable, competent dentist of good moral character as evidenced by reference letters from three licensed dentists attesting to clinical competence, professional attainment, and good moral character.
3. Pays to the board the fee determined by the board.

4. Delivers to the board a certificate from the examining or licensing board of every state in which the person is practicing or is licensed to practice, certifying that the person is a licensed and registered dentist in that state, and is of good moral character.
5. Demonstrates the person's ability to the satisfaction of the board.

The requirement of a practical clinical examination to demonstrate competency may be waived by the board if the applicant meets the other requirements of this section.

43-28-16. Certificate - Term - Displayed in place of business - Renewal - Fee. A certificate of registration issued under this chapter is valid for two years and must be renewed in the month prior to expiration. The fee for renewal of the certificate must be determined by the board and must be submitted at the time of renewal. The holder of a license and certificate of registration shall display the license and certificate conspicuously in the holder's place of business. The certificate of registration or the renewal of the certificate is prima facie evidence of the right of the holder to practice dentistry in this state during the time for which it is issued. All fees provided for in this chapter may be collected by the board in a civil action.

43-28-16.1. Death certificate issuance by dentist. Any dentist licensed and registered may issue a death certificate in an emergency, when the cause of death is known to the dentist.

43-28-17. Failure to pay annual fee - Cancellation of license - Inactive status. If a licensed dentist fails to pay the biennial fee for the renewal of the certificate of registration on or before the due date of the payment, after thirty days' written notice of the default without proper payment, the board may cancel the license, notify the dentist of the cancellation, and record the cancellation. The payment of the biennial fee within the thirty-day period, with an additional sum determined by the board, will excuse the default. Upon payment of a fee determined by the board, a licensee may request to have the licensee's license placed on inactive status upon expiration of the license. While on inactive status, the licensee may not engage in the practice of dentistry in the state until the individual submits a reinstatement application, pays a renewal fee, and meets any additional requirements established by rule of the board.

43-28-18. Grounds for revocation or suspension of license and certificate. The board may revoke, suspend, limit, or restrict the scope of the license and the certificate of registration of any dentist who has:

1. Been guilty of dishonorable, unprofessional, or immoral conduct.
2. Been convicted of an offense determined by the board to have a direct bearing upon the individual's ability to serve the public as a dentist, or the board determines, following conviction for any offense, that the individual is not sufficiently rehabilitated under section 12.1-33-02.1.
3. Been adjudged mentally ill and not judicially restored by the regularly constituted authorities.
4. Been guilty of habitual intemperance or addicted to the use of drugs.
5. Employed or permitted an unlicensed individual to practice dentistry in the office under the dentist's control.
6. Become grossly negligent in the practice of the profession.
7. Practiced fraud and deceit in obtaining the license or in the practice of dentistry.
8. Willfully betrayed confidential relations.

9. Shared any professional fee with anyone or paid anyone for sending or referring patients to the dentist. However, this does not prohibit licensed dentists from practicing in a partnership and sharing one another's professional fees, nor prohibit a licensed dentist from employing any other licensed dentist or licensed dental hygienist.
10. Used any advertising of any character tending to mislead and deceive the public.
11. Failed to demonstrate minimum professional competency in certain areas of clinical practice if the clinical deficiency represents a threat to the public but is not so severe as to be termed gross negligence. When those deficiencies are noted, the license and registration may be suspended or restricted in scope until the dentist obtains additional professional training that is acceptable to the board and has demonstrated sufficient improvement in clinical competency to justify reissuance of an unrestricted license and registration.
12. Prescribed medications for reasons or conditions outside the scope of dental practice.
13. Fraudulently, carelessly, negligently, or inappropriately prescribed drugs or medications.
14. Directed auxiliary personnel to perform acts or provide dental services for which the personnel are not licensed or qualified or are prohibited by law or rule.
15. Willfully engaged in fraudulent submission of insurance claims.
16. Made any false or untrue statements in the application for an examination to obtain a license to practice dentistry.
17. Made any false representations that the individual is the holder of a license or certificate of registration to practice dentistry.
18. Made any false claims that the individual is a graduate of a dental college or the holder of any diploma or degree from a dental college.
19. Failed to comply with commonly accepted national infection control guidelines and standards.
20. Abandoned the dentist's practice as defined by rules adopted by the board.
21. Violated this chapter.

43-28-19. Revocation of license and certificate - Proceedings, how initiated - Service of notice and hearing. Proceedings for the suspension or revocation of a license and certificate of registration to practice dentistry in this state may be initiated:

1. Upon the complaint of any member of the board; or
2. Upon the complaint of another person.

The complaint must be in writing and verified under oath by the complainant, either upon personal knowledge or upon information and belief. Three copies thereof must be filed with the executive director of the board, whereupon the board, if it deems the complaint sufficient, shall issue its order setting a date and place for the hearing thereof on the merits. The executive director of the board shall cause a copy of the complaint and order for hearing to be served upon the accused, either personally or by certified mail, and such service must be made at least twenty days before the day set forth for hearing thereon.

43-28-20. Plea - Answer - Trial of issues - Witnesses and cost. A dentist served with a complaint and order shall appear before the board at the time appointed for such hearing and shall either plead to or answer the charge made against the dentist. The dentist may admit the truth of the charge prior to the hearing and waive any right to a hearing. If the dentist admits the truth of the charge then the board shall make appropriate findings of fact and conclusions of law and order the suspension or revocation of the dentist's license and certificate, or any other disciplinary action the board finds appropriate without any further proceedings. But if the accused fails to appear or admit the truth of the charge prior to the hearing, or if the dentist appears and denies the charge then the issues presented by the pleadings must be heard, tried, and determined upon the merits in accordance with the procedure prescribed by chapter 28-32. The board and the accused may be represented by licensed attorneys. Witnesses may be subpoenaed, examined and cross-examined, depositions may be taken, filed, and introduced in evidence in the manner provided for the production and examination of witnesses and the taking of depositions in civil actions in the district court. The hearing for good cause shown, may be continued from time to time until the trial has been completed. The board shall make a full and complete written record of all the testimony and exhibits offered and received in evidence and of all proceedings had before it at such hearing. A transcript of the evidence and of all proceedings had and made a matter of record must be furnished to the accused upon written request therefor upon payment of a reasonable fee to be fixed by the board.

43-28-21. Determination - Order - Appeal and review.

1. If the board finds and determines, after due hearing, that the accusations contained in the complaint have been established by substantial evidence, the board shall make its findings of fact, conclusions of law, and issue its order suspending or revoking the license and certificate of registration, or take any other disciplinary action the board finds appropriate, or order the dismissal of the proceedings upon the merits, for failure of proof. If the dentist did not admit the truth of the charge prior to the hearing, and the board determines the accusations contained in the charge were established by substantial evidence, the board may assess the dentist for the board's costs, disbursements, and attorney's fees incurred for the hearing. The original order must be filed with the secretary and a copy thereof must be served upon the respondent by certified mail within ten days from the entry thereof.
2. If the accused feels aggrieved by or dissatisfied with the order of the board the accused has the right to appeal therefrom to the district court of the county wherein such proceedings were tried and determined for a review thereof in said court within the time and in the manner prescribed by law for appeals to the district court from orders issued by administrative agencies. If the court does not reverse the order of the board, the dentist may be assessed the costs, disbursements, and attorney's fees incurred by the board for the appeal.

43-28-22. Reinstatement of license - Renewal of certificate - When issued - Fees. A dentist may not be reinstated, and a license and certificate of registration may not be reissued, except on the following conditions:

1. Where the license and certificate of registration have been revoked for cause upon one or more of the grounds specified in this chapter, a dentist may be reinstated only:
 - a. Upon application to the board for reexamination.
 - b. Upon payment of examination fees required by this chapter.
 - c. Upon successfully passing the reexamination.
 - d. Upon payment of an additional administrative fee to be fixed by the board.

2. Where the license and certificate of registration has been revoked for nonpayment of biennial registration fees required by this chapter, the dentist may be reinstated upon payment to the board of the amount of renewal fees then in default, with an additional administrative fee to be fixed by the board. However, the board, after an investigation, may require a dentist whose license has been revoked for nonpayment of the biennial registration fee to submit to a reexamination as to the individual's qualification to practice dentistry before the individual is reinstated, if the board determines that the best interests of the public, and the applicant, will be served thereby.

43-28-23. Notice to board of change of address. Within thirty days after a licensed and registered dentist changes the dentist's place of business, the dentist shall notify the executive director of the board of the new address. The notice must be given by certified mail and return receipt requested. Such licensed and registered dentist may not practice dentistry in the state for more than thirty days after such removal without giving such notice.

43-28-24. Duplicate license and certificate - When issued - Fee. If a license or certificate of registration to practice dentistry in this state is lost or destroyed, the board shall issue and deliver a duplicate license or certificate upon satisfactory proof by applicant of the loss or destruction. The fee for a duplicate license must be determined by the board and the fee for issuing a duplicate certificate of registration must be determined by the board.

43-28-25. Unlawful acts - Penalty. It is a class A misdemeanor:

1. For any dentist, dental hygienist, legal entity, or unlicensed person, who owns, operates, or controls any room or office where dental work of any kind is done or contracted for, to employ, keep, or retain any unregistered dentist, dental hygienist, dental assistant, or other unregistered persons to do any dental work whatsoever, except as otherwise provided by statute or rule.
2. For any dentist to help or assist any unlicensed person to perform any act or operation that is defined as the practice of dentistry.
3. For any dentist to advise or direct patients to dental laboratories or dental laboratory technicians for any dental service, or to advise or direct patients to deal directly with laboratories or dental laboratory technicians.
4. For any dentist to work or cooperate with dental laboratories that advertise for public patronage by delegating work to such laboratories in return for the reference of laboratory patrons for professional services.
5. For any dentist to use the services of any person or legal entity not licensed to practice dentistry in this state, to construct, alter, repair, or duplicate any denture, plate, partial plate, bridge, splint, orthodontic or prosthetic appliance, without first furnishing such unlicensed person a written prescription on forms prescribed by the board which must contain:
 - a. The name and address of such unlicensed person;
 - b. The patient's name or number, in the event such number is used, the name of the patient must be written upon the duplicate copy of such prescription retained by the dentist;
 - c. The date on which it was written;
 - d. A prescription of the work to be done, with diagram, if necessary;
 - e. A specification of the type and quality of materials to be used; and

- f. The signature of the dentist and the number of the dentist's North Dakota license.

Such unlicensed person shall retain the original prescription and the dentist shall retain a duplicate copy thereof for inspection by the board or the board's agent for two years.

- 6. For any dentist:
 - a. To use the service of any unlicensed persons without first having furnished the unlicensed person such prescription;
 - b. To fail to retain a duplicate copy thereof for two years; or
 - c. To refuse to allow the board or the board's agent to inspect such prescription during the two-year period of time.
- 7. For any unlicensed person:
 - a. To perform any such service without first having obtained such prescription;
 - b. To fail to retain the original thereof for two years; or
 - c. To refuse to allow the board or the board's agent to inspect it during such two-year period of time.
- 8. For any person:
 - a. To falsely claim or pretend to be a graduate from any dental college or the holder of any diploma or degree from such college;
 - b. To practice any fraud and deceit either in obtaining a license or a certificate of registration;
 - c. To falsely claim or pretend to have or hold a license or certificate of registration from the board to practice dentistry; or
 - d. To practice dentistry in this state without a license and certificate of registration.
- 9. For any person, except a North Dakota licensed practicing dentist, to own more than forty-nine percent of an office practice or business at which the practice of dentistry is performed. This provision does not apply to a board-approved medical clinic, hospital, or public health setting with which a dentist is associated; a board-approved nonprofit organization created to serve the dental needs of an underserved population; or the heir or personal representative of a deceased dentist. The heir or personal representative may operate an office under the name of the deceased dentist for a period of not longer than two years from the date of the dentist's death.

The board may institute a civil action for an injunction prohibiting violations of this section without proof that anyone suffered actual damages.

43-28-26. Punishment for misdemeanors. Repealed by S.L. 1975, ch. 106, § 673.

43-28-27. Fees. All license fees, registration fees, and other fees authorized to be assessed and collected by the board must be established by rules adopted by the board.